IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

JOSEPH CARL PARROTT, *Appellant*, vs. UNITED STATES OF AMERICA, *Appellee.*	No. 20730
ROBERT ALAN LAWRENCE, *Appellant*, vs. UNITED STATES OF AMERICA, *Appellee.*	No. 20746
TERRY ALLAN WOLFE, *Appellant*, vs. UNITED STATES OF AMERICA, *Appellee.*	No. 20926
LEONARD RALPH WALKER, II, *Appellant*, vs. UNITED STATES OF AMERICA, *Appellee.*	No. 20927

APPELLANTS' OPENING BRIEF

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JURISDICTION

These are appeals from judgments rendered and entered by the United States District Court for the Southern District of California, Central Division.

Each appellant was sentenced to custody of the Attorney General for a period of three years except Walker, who was given two, concurrent, three year sentences, one on each of two counts (R. P. 15, R. L. 4, R. Wo 6, R. Wa 7).[1] Title 18, Section 3231, United States Code, conferred jurisdiction in the district court over the prosecutions of these cases. This court has jurisdiction of this appeal under Rule 27 (a) (1) and (2) of the Federal Rules of Criminal Procedure. The notices of appeal were filed in the time and manner required by law (R. P. 18, R. L. 6, R. Wo 7, R. Wa 8).

STATEMENT OF THE CASES

The indictments charged each appellant with a violation of the Universal Military Training and Service Act, Walker being charged with two violations. Parrott was charged with failing to perform civilian work (R. P. 3); Lawrence with refusing to submit to induction (R. L. 2); Wolfe, with refusing to submit to induction (R. Wo 2) and Walker, in Count One with failing to report for induction and in Count Two with failing to advise his local board where mail could reach him (R. Wa 2).

Appellants pleaded not guilty, were tried, Parrott and Lawrence by Judge Peirson M. Hall, without a jury, Wolfe and Walker by Judge E. Avery Crary, with juries, found guilty and sentenced, all as shown in the short Clerk's Transcript on file in each appeal.

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1. R. refers to the typed Transcript of Record, P. for Parrott, etc.

Written motions for judgments of acquittal were filed in each case.

Additionally, each case presents the problem of admissibility of the government's evidence

THE FACTS

Each appellant professed conscientious objections to war. Only Parrott was so classified. He then refused to do the civilian work required of conscientious objectors, basing his refusal on his commitment to his ministry, he (alone) being one of Jehovah's witnesses.

Where additional facts are applicable to a point in the argument they will be mentioned, and with reference to the records' pagination.

QUESTIONS PRESENTED AND HOW RAISED

I

Did the trial courts err, in admitting appellee's essential evidence (the Selective Service System file, Exhibit One) over objection of each appellant?

II

Was there a basis in fact for rejecting the classification claims of each defendant?

III

Was each local board required to reopen the classification of its registrant and reclassify him after he presented new evidence?

Point I was raised by objection to the admission of the exhibit, Points II and III by motions for judgment of acquittal and the following points (ones not common to all appellants) were included in the written motions.

IV

Was appellant Lawrence illegally denied the statutory I-S classification?

V

Was appellant Wolfe denied procedural due process at his induction ceremony?

SPECIFICATION OF ERRORS

I

The district courts erred in the admission into evidence of the Selective Service System files.

II

The district courts erred in failing to grant the motions for judgment of acquittal

SUMMARY OF ARGUMENT

I

The trial courts erred, in each trial, in admitting the government's exhibit, over objection.

Without this exhibit each prosecution must fail.

Admission of these exhibits offends Rule 44, §1732, and is contrary to the oral evidence.

II

In each instance the appellant made out a prima facie case and no record was made rebutting it. The local board is required to make a rebutting record when confronted with a prima facie case. *Dickinson* v. *United States,* 346 U.S. 389.

III

Each appellant except Parrott presented evidence of a new status, which if true required reopening and reclassification. In none of these cases did the administrative agency reopen the classification and thus each registrant was deprived of an appellate determination.

MacMurray v. *U.S.A.,* 9 Cir., 1964, 330 F.2d 928;
U.S.A. v. *Bender,* 3 Cir., 1953, 206 F.2d 247;
U.S.A. v. *Vincelli,* 2 Cir., 1954, 216 F.2d 681;
U.S.A. v. *Henderson,* 7 Cir., 1955, 223 F.2d 421;
U.S.A. v. *Stepler,* 3 Cir., 1958, 258 F.2d 310;
U.S.A. v. *Olvera,* 5 Cir., 1955, 223 F.2d 880;
U.S.A. v. *Stain,* 9 Cir., 1956, 235 F.2d 339;
U.S.A. v. *Hinkle,* N.D. Calif. 1954, No. 11067;
U.S.A. v. *Nichols,* S.D. Calif. 1953, No. 22951.

IV

Appellant Lawrence was illegally denied the statutory I-S classification.

U. M. T. & S. Act, 1951 §6(i).
32 C.F.R. §1622.15(b).

V

Appellant Wolfe was denied due process of law at his induction ceremony.

At his induction ceremony he was not given the mandatory warning that refusal to submit to induction was a felony carrying a penalty of five years imprisonment and/or a $10,000.00 fine, at the time prescribed by the regulations.

ARGUMENT

I

Failure of Proof

The Government's Exhibit should not have been admitted, over objection.

In each prosecution the government relied on the Selective Service System's file of the defendant to prove his guilt.

We believe it will be undisputed that if the court erred in admitting this exhibit the government's case, in each instance, must fall.

In the prosecutions of Lawrence, Parrott and Wolfe the exhibit was admitted solely on the basis of a certificate that accompanied it. This certificate is a thin paper sheet attached to the front of the photocopy of the file.

In the fourth (and last) of the series of prosecutions, that of Walker, the prosecutor of Walker had also been the prosecutor of Lawrence and had heard defense counsel's objections (and perhaps had heard from the other two

prosecutors of their similar encounters in the Parrott and Wolfe cases); in any event in the Walker prosecution the effort to introduce the exhibit was elaborate. It is set forth in the Reporter's Transcript, pages 10-24 and we will make some detailed comments on it, with quotes, below. It is evident this effort was no mere tossing of a photocopy of the file on the clerk's desk, as was the case, we contend, in the first three of these trials. Nevertheless, appellant Walker contends that it, too, was lacking, particularly in foundation. The other appellants contend that if it is determined by this court that the relatively careful presentation in Walker's case is fatally lacking that the no-oral-evidence presentations in their cases certainly must also fall.

The objections made by appellants are based on §1732, Title 28 U.S.C., on Rule 44, Federal Rules of Civil Procedure (Rule 27, F.R. Cr. P.) and that the exhibits in the first three cases were photocopies. In the last prosecution, Walker's, Major Malcom F. Miller had the original file with him.

We point out that the record shows—

1. Major Miller testified that *he* was the custodian of Walker's files [Rep. Tr. 15, line 16] whereas the certificate on the front of Walker's file shows Captain Proffitt to be the custodian.

2. The Major's testimony itself quite clearly shows all the facts essential to a determination of the question, a determination adverse to the appellee's contention:

a. The file is kept by the local board clerk (Rep. Tr. 12/16).

b. When a prosecution is contemplated the file is sent to various places, including the offices of the (1) United States Attorney and of the (2) State Director for Selective Service and of his (3) regional assistants (Rep. Tr. 12/25).

c. Ordinarily the files are not out of the local board's office (Rep. Tr. 14/21).

d. During the trial period "they are in *hands* of the United States Attorney" [Rep. Tr. 15/11, italics supplied] although the prosecutor had phrased his question to the witness "Major Miller are these files in custody of your office." (Rep. Tr. 14/19).

e. In the regular course of business they are in the local board office (Rep. Tr. 16/1—); the original file is returned to the local board after the state officials look it over (Rep. Tr. 22/10).

The argument of all appellants may be summed up by the following:

1. The question asked of Major Miller:
   "Is it fair to say, Major, that you are only a temporary custodian, and even more fair to say a forwarding agent?" (Rep. Tr. 22/21) He was not permitted to answer.

2. In each of the three other cases the original file was never in court. The argument on their subpoint was detailed in Lawrence's case, Rep. Tr. 5/11—, and will not be repeated here.

In conclusion we contend it is a bad practice, and to be condemned. In Walker's instance the office of the United States Attorney seemed to realize the hazard of continuing it but, as pointed out above, brought the wrong witness into court, among other things.

II

The Denial of the Claimed Classification by the Selective Service System Was Without Basis in Fact, Arbitrary, Capricious and Contrary to Law.

A. The appellants Lawrence, Wolfe and Walker professed conscientious objections to military training. They each claimed the I-O classification.

32 C.F.R. §1622.14 provides for the I-O classification:

"1622.14 Class I-O: Conscientious Objector Available for Civilian Work Contributing to the Maintenance of the National Health, Safety, or Interest.—(a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces.

"(b) Section 6(j) of Title I of the Universal Military Training and Service Act, as amended, provides in part as follows:

> "Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.'

B. Appellant Parrott claimed the minister's classification of IV-D.

32 C.F.R. §1622.14 governs classification of registrants presenting evidence for a minister's status.

1622.43 Class IV-D: Minister of Religion or Divinity Student.—(a) In Class IV-D shall be placed any registrant:

(1) Who is a regular minister of religion;

(2) Who is a duly ordained minister of religion;

(3) Who is a student preparing for the ministry under the direction of a recognized church or religious organization and who is satisfactorily pursuing a full-time course of instruction in a recognized theological or divinity school; or

(4) Who is a student preparing for the ministry under the direction of a recognized church or religious organization and who is satisfactorily pursuing a full-time course of instruction leading to entrance into a recognized theological or divinity school in which he has been pre-enrolled.

(b) Section 16 of Title I of the Universal Military Training and Service Act, as amended, contains in part the following provisions:

"Sec. 16. When used in this title—* * * (g) (1) the term 'duly ordained minister of religion' means a person who has been ordained, in accordance with the ceremonial, ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practises of a religious character to preach and to teach the doc-

trines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

"(2) The term 'regular minister of religion' means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

"(3) The term 'regular or duly ordained minister of religion' does not include a person who irregulary or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect, or organization."

We will first make a very short, general argument that applies to all four appeals:

The attitude of the Selective Service System and of the courts below, concerning whether there was a basis in fact for the classifications was grounded upon error. To begin with, it ignores the doctrine of *Dickinson* v. *United*

States, 346 U.S. 389 (1953). That decision requires that the board, "* * * must find and record affirmative evidence that he has misrepresented his case * * *"— 346 U.S., pp. 396, 397, 399 (dissenting opinion).* These agency and courts' decisions below, with respect to appellants other than Parrott also ignore the doctrine of *Witmer* v. *United States,* 75 S. Ct. 392 (1955), wherein the yardstick of sincerity is made decisive. Absent any finding recorded that questions it, the Dickinson doctrine controls, as it controls court review of *all* Selective Service System classifications. Also ignored are the teachings of a long line of Court of Appeals decisions that will be cataloged several pages hereinafter.

The Supreme Court, in Dickinson, refers to affirmative evidence of sham and to its recordation, as essential to a prosecution.

We will now argue Parrott's case:

"Vocation" is the chief consideration, here. "Full-time" is nowhere mentioned; nor is "part-time" mentioned. Nor is the word "Pioneer" or any equivalent expression used. Neither hours of activity nor clerical title are recognized by the Act or the regulations as factors in classifying.

Ministerial activity that is "irregular" is stated to be a disqualification. This consideration does not apply here.

*The language of Dickinson is:
"But when the uncontroverted evidence supporting a registrant's claim places him prima facie within the statutory exemption, dismissal of the claim solely on the basis of suspicion and speculation is both contrary to the spirit of the Act and foreign to our concepts of justice.
"Reversed." (74 S. Ct. 152, 157).

Appellant's uncontradicted evidence is that he regularly performed enumerated clerical activity.

The only other disqualifying consideration mentioned by law is "incidental". Here there was no finding by the board on this factor. Appellant's factual and relevant testimony was to the contrary. None was rebutted. The final step of his processing by the Selective Service System shows that he didn't regard his ministerial work as incidental to other work but as something so important to him that he willingly faced a prison term when it became clear that the I-O classification given him would interfere with his obligation to Jehovah.

Thus, it is seen that appellant Parrott made out a prima facie case, and an unrebutted one.

We will now argue the prima facie cases of the other three appellants.

Congress says that a man is a conscientious objector if he (1) believes in a Supreme Being, (2) conscientiously opposes participation in the armed forces by combatant or noncombatant service, and (3) bases such objection on religious training and belief. The appellants concededly believed in a Supreme Being. Each concededly claimed to base those objections on his religious training and belief.

Recent decisions* have greatly broadened the construction of "religious" belief but there probably will be no debate on this, the religious belief phase of the appeals.

*U.S.A. v. *Seeger*, 85 S. Ct. 850 (1965); *Fleming* v. *U.S.A.*, 344 F.2d 912 (10 Cir., 1965).

The evidence submitted by the appellants established at least prima facie that they had sincere and deep-seated conscientious objections against participation in combatant and also noncombatant military service and that these objections were based on a "relation to a Supreme Being involving duties superior to those arising from any human relation." This material also showed that their beliefs were not solely based on "political, sociological, or philosophical views, or a merely personal moral code"; that they arose from their religious training and belief.

The Selective Service System raised no question (none is recorded) concerning the veracity of the appellants. The question therefore, is not one of fact, but is one of law; *Dickinson* v. *United States, supra.* The law and the facts in the files, at least prima facie, established that appellants are conscientious objectors opposed to combatant and noncombatant service.

III

When Evidence of a New Status Is Presented to the Local Board It Is Required to Reopen the Classification; If It Acts Arbitrarily the Registrant Is Also Illegally Deprived of Administrative Appellate Opportunities.

"32 C.F.R. §1625.1. Classification Not Permanent. (a) No classification is permanent."

The appellants affected by this element in the appeals are Wolfe, Lawrence and Walker.

Each gave his Local Board evidence, after the expiration of his initial appellate time (which is 10 days after mailing of a Notice of Classification) of a status that was

new and, as the applicable regulation phrases it, if true, required a "reopening" [for a testing of the truth] and a reclassification to a deferred class [32 C.F.R. Part 1625]. In each instance the appellant's local board did not reopen his classification. Even if each board had given another I-A classification on a reopening and reclassification this would have given the registrant appellate rights on his new status claim. This was the principal deprivation.

Additionally, it is to be noted we do not have here a situation of "delaying tactics" because none of these appellants had ever had an appellate determination, on any claim (Wolfe, see Ex. 11; Lawrence, Ex. 11, and Walker, Ex. 11). The argument sometimes advanced that a registrant can frustrate the selective process by successive appeals (if this can ever be so) can have no place in these cases.

Assuming that it is discretionary for a local board to "reopen" what we do have here, in the best light, is an abuse of discretion. We submit these young men should have had (and by reversal will have) their evidence and claims considered as Congress has provided.

We have here, in all these three cases, the conscientious objector claim; this is a special type of claim; it presents a situation where Congress intended to take such registrants away from local prejudice and to provide a relatively accurate method of determining sincerity: by the FBI inquiry, a Hearing Officer's Hearing and a final evaluation of everything by a Department of Justice expert,

who makes a lengthy analysis and recommendation to the Appeal Board. None of these appellants had any of this special (or any) appellate procedure.

The deprivation of this appellate opportunity has already been condemned in *MacMurray* v. *U.S.A.*, 9 Cir., 1964, 330 F.2d 928.

Also see:

U.S.A. v. *Bender,* 3 Cir., 1953, 206 F.2d 247;
U.S.A. v. *Vincelli,* 2 Cir., 1954, 216 F.2d 681;
U.S.A. v. *Henderson,* 7 Cir., 1955, 223 F.2d 421;
U.S.A. v. *Stepler,* 3 Cir., 1958, 258 F.2d 310;
U.S.A. v. *Olvera,* 5 Cir., 1955, 223 F.2d 880;
U.S.A. v. *Stain,* 9 Cir., 1956, 235 F.2d 339;
U.S.A. v. *Hinkle,* N.D. Calif. 1954, No. 11067;
U.S.A. v. *Nichols*, S.D. Calif. 1953, No. 22951.

Since the Hinkle and Nichols cases are unreported we give the pertinent parts:

In Hinkle, Judge Oliver J. Carter said:
"The problem to me resolves itself down to whether when Mr. Hinkle claimed a change in status, a real change in status, was the draft board guilty of abuse of discretion by refusing to reopen. Now, it is my opinion the draft board was. That does not mean that I would in any way conclude that Mr. Hinkle is in fact a full time minister of the gospel. That I leave to the draft board. And the only thing that I rule is that he should have the opportunity to make his claim and present his evidence and then have a decision based upon the facts.

"In that situation it is my duty to find the defendant not guilty, and I so find him at this time."

In Nichols, Judge Harry C. Westover said:

> "We are not now attempting to pass upon the validity of defendant's claim that he is entitled to a ministerial classification. He did, however, make that claim to his local board. The local board by refusing to reopen the case took away from registrant the right to have the matter passed upon by the appeal board. We do not believe it was the intent of Congress to place with the local boards the arbitrary right to determine when a registrant should be entitled to an appeal. The local board might very well disagree with the registrant's contention, but local boards should be vigilant at all times to see that registrants have a right to test their opinions upon appeal. It seems to the court that the action of the local board in this case was arbitrary, as it took away from registrant the right to present to the appeal board his claim that he was a minister.
>
> "This court is of the opinion that Congress intended registrants should have a right to appeal classifications to appeal boards, and that right of appeal should not be taken from them arbitrarily by local boards which refuse to reopen classifications. Because of the arbitrary action of the local board in the case at bar, which deprived defendant of his right of appeal, it is necessary that this court find defendant not guilty as charged."

IV

Appellant Lawrence Was Illegally Denied the Statutory I-S Classification.

U. M. T. & S. Act (1951), as amended, §6(i) (2) says that college students satisfactorily pursuing a full-time course shall be deferred until the end of the school year.

32 C.F.R. §1622.15 (b) says:

> (b) In Class I-S shall be placed any registrant who while satisfactorily pursuing a full-time course of instruction at a college, university, or similar institution of learning and during his academic year at such institution is ordered to report for induction, except that no registrant shall be placed in Class I-S under the provisions of this paragraph (1) who has previously been placed in Class I-S thereunder, or (2) who, prior to June 19, 1951, had his induction postponed under section 6(i) (2) of the Selective Service Act of 1948, as amended, or was deferred as a student under section 6(h) of such Act. A registrant who is placed in Class I-S under the provisions of this paragraph shall be retained in Class I-S (1) until the end of his academic year, or (2) until he ceases satisfactorily to pursue such course of instruction, whichever is the earlier. The date of the classification in Class I-S and the date of its termination shall be entered in the "Remarks" column of the Classification Record (SSS Form No. 102) and be identified on that record as Class I-S (C).

Page 23 of Selective Service System file of Lawrence (the government's exhibit) is the college's certificate, dated May 18, 1965, that he was to graduate in June, 1966.

Page 24 is his letter confirming this.

Page 11 is the Minutes of Action of Local Board. It shows he was never classified in Class I-S, although the local board gave him what it considered to be the equivalent: "5-20-65 Postponement of Induction (SSS 264) mailed registrant, postponed until June 1965 induction call date".

This was not the equivalent. If he had been given the I-S classification he then would have had the opportunity to timely present his claim for the conscientious objector classification. The order to report for induction is the standard deadline. 32 C.F.R. §1625.2. Only a registrant in Class I-A or I-A-O can be given an order to report for induction. The I-S would have cancelled the order to report for induction and thus given Lawrence his opportunity. The local board could then have given him another I-A classification notice *but* he would then have been able to perfect an administrative appeal. This he never had. The deprivation of this opportunity is the vice present here, and is the denial of procedural due process.

V

Appellant Wolfe Was Denied Due Process of Law at His Induction Ceremony.

At his induction ceremony he was not given the mandatory warning that refusal to submit to induction was a felony carrying a penalty of five years imprisonment and/or a $10,000.00 fine.

All witnesses agreed on the facts (all references hereinafter being to the page and line of the reporter's transcript in Wolfe's case), Terry Allan Wolfe's testimony 19/13, 44/11—, Captain John H. Walsh's testimony 52/18—.

The particular fact that we contend is crucial is that there was no warning of penalty, as the pertinent regulation mandatorily presents, *between* the two "opportun-

ities" given by the inducting officer. The testimony of the inducting officer leaves no doubt of this: "That is true, he wasn't between the two opportunities." (52/18—).

The case law on induction procedure has developed as follows:

Initially, this court, in *Chernekoff* v. *U.S.A.*, 9 Cir., 1955, 219 F.2d 721, held that *two* opportunities must be given the selectee, who refuses to submit, because the pertinent army regulation says so [724-725].

Next, Judge Jertberg, in *U.S.A.* v. *Lindsay,* S.D. Calif. 1958, No. 3496-ND, held that the selectee must be given an explicit *and detailed* warning of the penalty, because the pertinent regulation says so. Since the opinion is unreported (and has been persuasive to others: see *U.S.A.* v. *Dalmatoff,* S.D. Calif. 1958, No. 3493, Judge Westover) it will be quoted, at some length.

After quoting the letter of the induction officers to the United States Attorney (the predecessor of the one subsequently adopted and used at present: see pp. 65-66 of the government's exhibit) Judge Jertberg said:

> "It is to be noted that the letter states that the defendant was informed that refusal 'constitutes a felony under the provisions of the Selective Service regulations and that conviction would subject him to punishment'. It omits to state that the defendant was informed that the punishment might be 'by imprisonment for not more than 5 Years or a fine of not more than $10,000.00 or both'. No other evidence appears in the record concerning the circumstances surrounding the defendant's refusal to submit to induction, except said letter.

"In *Chernekoff* v. *United States,* 219 F.2d 721 (Ninth Circuit), the court stated at page 725, referring to the Army regulations:

> 'One purpose of this regulation is self-evident. It is intended to give a registrant a last clear chance to change his mind and accept induction rather than certain indictment and possible conviction for a felony carrying a maximum punishment of five years or a fine of not more than $10,000.00 or both. The regulation is couched in mandatory, not discretionary, language.'

"The plaintiff contends that in the absence of evidence to the contrary, it must be presumed that the defendant was advised by the induction officials that the offense of refusing to submit to induction would subject the defendant to punishment by imprisonment for not more than 5 years or a fine of not more than $10,000.00, or both, because of the presumption that public officials perform their duties according to law. The vice in this argument is that even if the letter (Plaintiff's Exhibit No. 1, page 21) does not overcome the presumption of regularity in showing that the induction officials did not follow the regulation, the letter raises a reasonable doubt that the regulation was followed. This doubt might have been overcome if the government had elected to call as witnesses the induction officials who might have testified that the warning given the defendant included the nature and extent of the possible punishment. The government, however, elected to stand on the Selective Service file. It may well be that if the defendant had been advised of the severity of the punishment that he would have changed his mind. As the Court in the Chernekoff

case, at page 725, stated: 'It does not matter that he might not have changed his mind. He should have been given the opportunity granted him by the Army's own regulation to seriously reflect and to let actions speak louder than words.'

"In this case, the defendant is presumed to be innocent until his guilt has been established beyond a reasonable doubt. Under the evidence in this case, and giving to the defendant the presumption of innocence to which he is entitled, I am compelled to state that I have a reasonable doubt that the defendant was given the required warning. The warning given him simply stated that conviction would subject him to punishment. He was entitled to know the severity and extent of the punishment which might have had the effect of causing the defendant to change his mind."

In the Wolfe case the flat, clear testimony of the induction officer was that the regulation was *not* followed even though the printed form [pages 65-66] used by the induction officer in *reporting* the event unmistakably showed that the warning *was to be between* the opportunities. At stake is the integrity of the pertinent law. If military men are to be permitted to use their own judgment as when and how they are to follow clear, simple regulations pertaining to changing the status of civilians to military life our civilian life is in jeopardy from further encroachment. It is better that they be held strictly to account in this area than to be concerned over the "loss" of one or two recruits, men who, because of conscientious objections, the army would never get anyway.

CONCLUSION

For the reasons above stated, the judgments of the district courts should be reversed and orders entered directing the district courts to render and enter judgments of acquittal.

Respectfully submitted,

J. B. TIETZ,
Attorney for Appellants

JUNE 14, 1966

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

J. B. TIETZ,
Attorney for Appellants